THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 2484 of 1995

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Dated 23-02-2006

Between:

P.Narayana Reddy & another.

..... PETITIONER

AND

The Vice Chairman & Managing Director, A.P.S.R.T.C., Musheerabad, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 2484 of 1995

O R D E R:

Proceedings of the first respondent dated 24-12-1994, in directing that the pay fixation/increments drawn by employees contrary to the instructions issued in the said proceedings, be rectified and excess payment be recovered duly following the procedure, is impugned in the present writ petition.

Facts, to the extent necessary, are that both the petitioners were working as Senior Assistants under the control of the third and fourth respondents respectively. They were originally appointed as Junior Assistants in the SriSailam Devasthanam in

December, 1972 and February, 1973 respectively and were promoted as Senior Assistants in the SriSailam Devasthanam itself. The transport department of SriSailam Devasthanam was taken over by the A.P.S.R.T.C. in the year 1989 and the Government issued G.O.Ms.No.977, dated 30-09-1989, prescribing the norms and conditions for absorption of the staff working in the transport wing of the Devasthanam protecting their pay, cadre etc.

W.P.No.14425 of 1989 and batch was filed challenging the validity of G.O.Ms.No.977, dated 30-09-1989. This Court disposed of the said batch of writ petitions, by order dated 04-12-1990, with certain directions. Petitioners would submit that pursuant to the order of this Court, erstwhile employees of the SriSailam Devasthanam, whose services were absorbed with the A.P.S.R.T.C., were entitled to all benefits such as pay scales, increments etc. as

available to regular employees of the A.P.S.R.T.C. and the earlier service rendered by such displaced employees, in the SriSailam Devasthanam, must be considered to be on par with other employees of A.P.S.R.T.C., for all purpose, except for promotion to higher cadres. It is stated that after absorption, the petitioners were given all the benefits and increments. Pay scales for employees of the A.P.S.R.T.C. was revised by circular dated 29-04-1994 with effect from 01-04-1993. This circular provides for weightage increments to be given to employees of the Corporation as under:

1. One increment for Employees appointed on or before 1st April, 1988 and on or after 2nd April, 1978.
2. Two increments for employees appointed on or before 1st April, 1978 and on or after 2nd April, 1968.
3. Three increments for employees appointed on or before 1st April, 1968.

Petitioners would contend that they fall under the second category and are entitled to be paid two increments since they were appointed in the SriSailam Devasthanam prior to 1st April, 1978, and their services in the Devasthanam is required to be taken into consideration for all purposes except for the purpose of promotion. The petitioners are aggrieved by the action of the respondents in denying

them the benefit of weightage increments. Reference is made to the proceedings of the first respondent dated 24-12-1994, wherein it was directed that the service rendered in the Devasthanam, by the transferred employees, should not be taken into account for the purpose of service weightage in Revised Pay Scale-1993. The second respondent, consequent thereto, is said to

have issued proceedings dated 18-01-1995, directing all the Unit Officers of the Corporation to recover the excess payments made by refixing the pay fixation/increments drawn, by the absorbed employees of SriSailam Devasthanam (Transport Wing), contrary to the circular dated 24-12-1994.

The basis for the petitioners' claim for being granted weightage increments, are the minutes of the joint meeting held on 29-05-1989, the circular of the A.P.S.R.T.C. dated 29-04-1994 and the judgment of this Court in W.P.No.14425 of 1989 and batch. It is necessary to briefly refer thereto.

Clauses 9 and 13 of the Minutes of the Joint Meeting held on 29-05-1989, read as under:

9.**Claiming of Seniority**: The seniority of transferred employees shall be counted in the respective cadres of A.P.S.R.T.C from the date of their joining in A.P.S.R.T.C. and their past service rendered in the Devasthanam will not be reckoned in A.P.S.R.T.C. for the purpose of seniority.

13. **Fixation of Pay Scales of 1989 on par with A.P.S.R.T.C**.:

After discussions made with the A.P.S.R.T.C. officials, the Devasthanam authorities will fix up the pay of the employees including ministerial staff on par with the Revised Pay Scales of A.P.S.R.T.C., 1989 duly making necessary entries into the Service Registers of the individuals.

While the seniority of the transferred employees of the Sri Sailam Devasthanam is required to be taken into account only from the date of their joining the service in the A.P.S.R.T.C., their past service rendered in the Devasthanam is not to be reckoned in the A.P.S.R.T.C. for the purpose of seniority. The pay scales of the employees of the Devasthanam was required to be fixed by the Devasthanam itself on par with the Revised Pay Scales of APSRTC, 1989, duly making necessary entries into the Service Registers of such employees. It is stated, across the bar, that in compliance with clause 13, the Sri Sailam Devasthanam had fixed the pay of its employees in the Transport wing on par with the Revised Pay Scales of APSRTC,

1989.

Circular, dated 29-04-1994, was issued pursuant to the resolution of the Board of Directors of A.P.S.R.T.C. dated 27-04-1994 approving the Revised Pay Scales and Allowances for the year 1993 and authorizing the Managing Director to implement the Revised Pay Scales and allowances pending approval of the Government. The circular refers to the settlement entered into under Section 12(3) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), between the A.P.S.R.T.C. Management and A.P.S.R.T.C. Employees Union on 28-04-1994. Under the circular dated
29-04-1994, instructions were issued for implementation of the Revised Scales of Pay and allowances for the year 1993. The
1993-Revised Scales of Pay and allowances were made applicable to all classes of employees of the A.P.S.R.T.C., who were on the rolls of the A.P.S.R.T.C. on 01-04-1993 and were appointed thereafter. Since the services of the petitioners were absorbed by the APSRTC prior to that date, and they were on the rolls of the APSRTC as on 01-04-1993, the petitioners were entitled to be paid the 1993 Revised Scales of Pay. It is not in dispute that the petitioners had, in fact, been given the benefit of the 1993-Revised Scales of Pay as applicable to employees of the APSRTC. Clause 3, of the circular dated 29-04-1994, relates to exercise of option and under clause 3.1.1, employees holding a post in the Corporation as on 31-03-1993

and who continued in service on 01-04-1993, the scale of which was revised, were entitled to exercise their option. As per Clause 3.1.11, the Revised Scales of Pay, 1993, were not admissible to employees, who were on leave preparatory to retirement on 01-04-1993 forenoon under the provisions of Chapter-V of the Ex-Nizam's State Railway Establishment Code. Clause 4 of the said circular relates to the method of pay fixation and sub-clause (d) thereof relates to weightage increments. Clause 4.4 provides that the principle fixation of pay laid down in the said rule would apply to substantive, officiating and temporary employees.

As stated above, W.P.No.14425 of 1989 and batch was filed before this Court challenging the validity of G.O.Ms.No.977, dated 30-09-1989, and this Court, by order dated 04-12-1990, disposed of the said writ petitions with the following directions:

"**The service rendered by the transferred employees prior to the date of transfer shall be taken into account for all purposes by the A.P.S.R.T.C. except for the purpose of considering their claims for promotion to next higher posts in the A.P.S.R.T.C**. For promotion to higher posts, the service rendered by the transferred employees subsequent to the date of transfer shall be taken into account. No costs.

Four Drivers-M/s.K.Krishna, B.Ranganna, M.G.Suryanarayana and M.G.Ramaswamy, petitioners 1, 2, 22 and 84 in W.P.No.11772 of 1990 it is represented, have not joined the service of the A.P.S.R.T.C. Evidently, they were hoping for a favourable judgment in these writ petitions. In the circumstances, the A.P.S.R.T.C. shall admit them to duty if they express their willingness within 30 days from today and they shall be paid salary from the date of joining. In other respects they should be treated on par with the other transferred employees. If, however, they fails to join it is open to them if so advised to approach an Industrial Court for an appropriate relief."

(emphasis supplied)

While examining the contention that transfer of employees of the Transport wing of SriSailam Devasthanam was in violation of Section 25-FF of the Act, this Court took note of the fact that the services of the transferred employees would not be interrupted in any manner and in fact, had, not been interrupted after the transfer was effected. Rejecting the contention that clause (b) of Section 25-FF was violated, this Court held that what is required to be seen is whether the conditions of service of a transferred employee are less favourable in A.P.S.R.T.C. than what he enjoyed in the service of the Devasthanam. This Court took note of the fact that there were no avenues of promotion in the Transport wing of the Devasthanam, that the Devasthanam was not in a financial position to maintain the Transport Wing and it was only with a view to safeguard the interests of the Devasthanam that they had conceived the idea of transferring the services of employees of the transport wing to the A.P.S.R.T.C. This Court took note of the fact that salary and allowances drawn by the employees of the Transport Wing of the Devasthanam were fully protected on transfer to the A.P.S.R.T.C. and "***only for the purpose of consideration for promotion to next higher posts, the service rendered prior to the date of transfer was excluded.***" Taking note all these facts, this Court held that this could not by any stretch of reasoning be considered as "***less favourable***" to the transferred employees and on the other hand, they were better off and they could aspire for promotions to higher posts.

Sri A.Bhaskara Chari, learned counsel for the petitioners, would place

reliance on the aforementioned observations of this Court, in its order in W.P.No.14425 of 1989 and batch, dated
04-12-1990, to contend that since this Court had held that since the service rendered prior to the date of transfer is to be excluded only for the purpose of consideration for promotion to higher posts, in all other respects, the service rendered by the petitioners in the
SriSailam Devasthanam, prior to their date of transfer, is required to be taken into consideration. Learned counsel would submit that if their services in the Devasthanam is taken into consideration, they must be deemed to have been in service prior to 01-04-1978 and thereby be entitled for two weightage increments in accordance with the circular dated 29-04-1994. Learned counsel would further contend that if the erstwhile employees of the Sri Sailam Devasthanam, now absorbed in A.P.S.R.T.C., were to be excluded from being conferred the benefit of weightage increments, the said circular would have specifically stated so, more so as a specific provision was made in clause 3.1.11 excluding employees who were on leave preparatory to retirement on 01-04-1993 forenoon under the provisions of Chapter-V Ex-Nizam's State Railway Establishment Code. Learned counsel would contend that if indeed the circular intended to exclude the petitioners from the benefit of weightage increments on the ground that they were not in the service of A.P.S.R.T.C., but were employees of the SriSailam Devasthanam prior to 1989, nothing prevented the A.P.S.R.T.C. from making a specific provision in this regard similar to the one which had been provided in the case of employees of the Ex-Nizam's State Railway Establishment Code.

Clause 4.2(d), of the circular dated 29-04-1994, relates to weightage increments and clause 4.2(d)(ii) provides that two increments shall be given as weightage increments to employees appointed on or before 01-04-1978 and on or after
02-04-1968. It is not in dispute that the petitioners herein were not in the service of the A.P.S.R.T.C. during the said period. It is only if their erstwhile service in the Sri Sailam Devasthanam is taken into consideration, as service rendered in the A.P.S.R.T.C., would they be entitled for this benefit.

As noted above, the 1993-Revised Pay Scales were given to all employees, who were on the rolls of the A.P.S.R.T.C. as on
01-04-1993, and since the petitioners were on the A.P.S.R.T.C. rolls on the said

date, they were given the 1993-Revised Scales of Pay. Weightage increments, under clause 4.2(d), however, is a benefit given in addition to the 1993-Revised Scales of Pay and is provided only to employees appointed prior to 01-04-1988. The word “employees” used in clause 4.2(d) of the circular dated 29-04-1994 must necessarily mean persons employed in the A.P.S.R.T.C. prior to 01-04-1988 alone and not those either in the service of other organizations or those in the service of the A.P.S.R.T.C. on or after
02-04-1988. Reliance placed by Sri A.Bhaskara Chari, learned counsel for the petitioners, on clause 3.1.11 of the said circular in support of his contention that the service rendered by the petitioners in the SriSailam Devasthanam must also be taken into consideration for calculating the period of service for being given the benefit of weightage increments, is misplaced. Clause 3.1.11

specifically provides that the Revised Scales of Pay, 1993, are not admissible to employees, who are on leave preparatory to retirement on 01-04-1993 forenoon under the provisions of
Chapter-V of the Ex-Nizam’s State Railway Establishment Code. The employees, referred to in clause 3.1.11, have been specifically held as not to be entitled to the Revised Scales of Pay, 1993. It is not in dispute that the petitioners have been admitted to the 1993-Revised Scales of Pay, unlike employees referred to in clause 3.1.11 inasmuch as under para 2.1 of the circular dated 29-04-1994, they were on the rolls of the A.P.S.R.T.C. as on 01-04-1993.

Now the contention as to whether the service rendered by the petitioners, earlier with the SriSailam Devasthanam, must be taken into consideration for the purpose of being granted weightage increments in accordance with the judgment of this Court in W.P.No.14425 of 1989 and batch, dated
04-12-1990. This Court specifically referred to the minutes of the Joint Meeting held on 29-05-1989 and to several of its clauses, more particularly, clause 9 thereof. After extracting clause 9 and, while dealing with the contention that transfer of employees of the Transport Wing of Sri Sailam Devasthanam was in violation of clause (b) of Section 25-FF, the observations, on which reliance is sought to be placed by Sri A.Bhaskara Chari, were made by this Court. Section 25-FF (b) of the Act provides that the terms and conditions of service applicable to the workman after such transfer are not in any way “less favourable” to the workman than those applicable to him

immediately before the transfer. It is while repelling the contention that clause (b) of Section 25-FF was violated and on referring to para 9 of the minutes of the Joint Meeting, dated
25-09-1989 that this Court observed that the terms and conditions of service of the erstwhile employees of the Devasthanam on their transfer and absorption to the A.P.S.R.T.C. was not less favourable. Compliance with Section 25-FF (b) would require that on transfer from SriSailam Devasthanam to the A.P.S.R.T.C., erstwhile employees of the Devasthanam are entitled for being continued on the terms and conditions of service applicable to them in the Devasthanam. It is not the case of the petitioners herein that they were given the benefit of weightage increments in the Devasthanam prior to their absorption in the A.P.S.R.T.C. As such non-payment of the said benefit, consequent upon their transfer to the A.P.S.R.T.C. would not be in violation of Section 25-FF(b) of the Industrial Disputes Act.

This Court referred to the contents of paragraph 9 of the minutes dated 25-09-1989 wherein it is provided that the salary and allowances drawn by the employees in the Transport Wing are fully protected on transfer to A.P.S.R.T.C. and it is in this context that this Court observed that ***only for the purpose of consideration for promotion to next higher posts, the service rendered prior to the date of transfer was excluded.*** This observation cannot be read or understood to mean that for all other purposes including grant of weightage increments, the service rendered in the Devasthanam must be reckoned as having been rendered in the A.P.S.R.T.C. or that the service rendered in the Devasthanam must be construed as service in the A.P.S.R.T.C. for being given the benefit of weightage increments under clause 4.2(d)(ii) of the circular dated 29-04-1994.

It is well settled that judgments cannot be read as statutes nor can observations made in judgments be read out of context. In this context reference is made to **Haryana Financial Corpn. v. Jagdamba Oil Mills**, wherein the Supreme Court held thus:-

"……Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark upon lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd.* v. *Horton*

((1951 AC 737: (1951) 2 ALL ER 1 (HL)at p. 761) Lord MacDermot observed: (All ER p. 14C-D)

> "The matter cannot, of course, be settled merely by treating the *ipsissima verba* of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

In *Home Office* v. *Dorset Yacht Co.(1970) 2 All ER 294)* Lord Reid said (at All ER p. 297*g-h*), "Lord Atkin's speech … is not to be treated as if it were a statutory definition. It will require qualification in new circumstances". Megarry, J. in (1971) 1 WLR 1062 observed: "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament." And, in *Herrington* v. *British Railways Board* ((1972) All ER 749 (HL) Lord Morris said: (All ER p. 761*c*)

> "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case."

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> "Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."
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> "Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."

The contention that the service rendered by the petitioners with the SriSailam Devasthanam prior to the date of their transfer to A.P.S.R.T.C., must be taken into account for the purpose of giving weightage increments has to be rejected.

The action of the respondents in holding that the petitioners are not entitled for the benefit of weightage increments, cannot therefore be said to be invalid or illegal. Needless to state that while the petitioners herein are not entitled for the benefit of wieghtage increments they are entitled to the benefits of 1993-Revised Scales of Pay and for pay protection consequent upon fixation of their pay scales on par with the 1989-Revised Scales of Pay of A.P.S.R.T.C. The petitioners can neither be treated as fresh appointees and be given the minimum pay scale applicable to fresh appointees nor can the pay scales given to them on their absorption in A.P.S.R.T.C. be refixed on par with fresh appointees of A.P.S.R.T.C.

The writ petition is accordingly dismissed. There shall however be no order as to costs.

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23-02-2006

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